LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 14 1962
F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 182

KERN'S CASEMENT SERVICE, a corporation,
Petitioner,

vs.

THE DEPARTMENT OF INDUSTRIAL RELATIONS OF THE STATE OF CALIFORNIA; THE DIVISION OF INDUSTRIAL WELFARE OF THE STATE OF CALIFORNIA; JESSE F. HENNING, Director of the Department of Industrial Relations of the State of California; FLORENCE G. CLIFTON, Chief of the Division of Industrial Welfare of the State of California; JOHN W. QUINNEY, VIRGINIA ALLEN, DANIEL E. KOSHLAND, FRANCES LARNER, and MAE BROSSEAU, in their capacity as The Industrial Welfare Commission of the State of California,
Respondents.

Answer to Petition for a Writ of Certiorari to the Supreme Court of the State of California

STANLEY MOSK
Attorney General
B. FREDERICK WALKER
Deputy Attorney General
State Building
San Francisco 2, California
Attorneys for Respondents

ROBERT PRINTING COMPANY OF CALIFORNIA, 582 HOWARD STREET, SAN FRANCISCO 5

SUBJECT INDEX

	Page
Preliminary Statement	1
Statement of the Facts	2
Argument	5
I. There Is No Conflict in the Decisions of the Highest Courts of the Various States Sufficient to Justify the Granting of the Instant Writ	5
II. The Instant Decision Upholding the Administrative Order in Question Does Not Deprive the Employer Herein of Due Process of the Law	8
III. The Instant Decision Upholding the Administrative Order in Question Does Not Deprive the Employer Herein of Equal Protection of the Law	13
IV. The Order in Question Is Not the Result of an Unconstitutional Delegation of Legislative Power to the Executive	14
Conclusion	17

TABLE OF AUTHORITIES CITED

Cases	Pages
Bess v. Park, 144 Cal. App. 2d 798, 301 P.2d 978 (1956)	9
Cal. Drive-In Restaurant Association v. Clark, 22 Cal. 2d 287, 140 P.2d 657 (1943)	8, 9
Commonwealth v. Perry, 155 Mass. 117, 28 N.E. 1126 (1891)	6, 7
Highland Farms Dairy v. Agnew, 300 U.S. 608, 57 Supreme Ct. 549, 81 Lawyers Ed. 835	14
Lincoln Union v. North Western Co., 335 U.S. 525	7, 8
Peters v. International Harvester Co., 248 Wis. 451, 22 N.W. 2d 518 (1946)	6
Redevelopment Agency v. Hayes, 122 C.A. 2d 777, 266 P.2d 105	7
Sanstrom v. California Horse Racing Award, 31 Cal. 2d 401, 189 P.2d 17	14
West Coast Hotel Co. v. Parrish, 300 U.S. 379	9
Zarnott v. Timken Detroit Axle Co., 244 Wis. 596, 13 N.W. 2d 53 (1944)	6

Codes	
8 Cal. Admin. Code sec. 11380, Order 5-57	4
Labor Code:	
Section 1182	15
Section 1200	9

In the Supreme Court of the United States

OCTOBER TERM, 1962

No.....

KERR'S CATERING SERVICE, a corporation,
Petitioner,

vs.

THE DEPARTMENT OF INDUSTRIAL RELATIONS OF THE STATE OF CALIFORNIA; THE DIVISION OF INDUSTRIAL WELFARE OF THE STATE OF CALIFORNIA; JOHN F. HENNING, Director of the Department of Industrial Relations of the State of California; FLORENCE G. CLIFTON, Chief of the Division of Industrial Welfare of the State of California; JOHN W. QUIMBY, VIRGINIA ALLEE, DANIEL E. KOSHLAND, FRANCES LARSEN, and MAE STONEMAN, in their capacity as The Industrial Welfare Commission of the State of California,
Respondents.

Answer to Petition for a Writ of Certiorari to the Supreme Court of the State of California

PRELIMINARY STATEMENT

The petitioner herein seeks a writ of certiorari from this learned court to review a decision of the Supreme

Court of the State of California upholding the validity of an administrative order enacted by the Industrial Welfare Commission of the Department of Industrial Relations of the State of California.

Petitioner contends that the order, which prohibits an employer of women and minors from deducting from the wage of said women and minors for any cash shortages not caused by the dishonest or willful act or by culpable negligence of the female or minor employee, is unconstitutional in the following three respects:

(1) It deprives said employer of property without due process of the law insofar as it deprives the employer of the right to contract by means of collective bargaining to deduct shortages from a negligent employee's wages over and above a minimum wage provided by state law.

(2) It deprives said employer of equal protection of the law insofar as it deprives the employer of the right to contract by means of collective bargaining to deduct shortages from a negligent employee's wages over and above a minimum wage provided by state law.

(3) It is an unconstitutional delegation of legislative power to the executive insofar as it deprives the employer of the right to contract to deduct shortages from a negligent employee's wages so long as said deductions do not invade the minimum wage provided by law.

STATEMENT OF THE FACTS

Plaintiff is in the business of industrial catering (CT 2). This consists of maintaining a fleet of trucks which are sent out daily on regular routes to various business and industrial establishments in the East Bay area (CT 35). The employees of these various plants purchase coffee, doughnuts, sandwiches, etc., from the trucks (CT 35). Plaintiff

employs a number of women as driver-salesgirls on these trucks (CT 35).

Plaintiff's driver-salesgirls are paid according to a formula pursuant to a collective bargaining agreement (CT 19). They receive as base pay $45 to $60 a week, depending on their length of service (CT 19). Plaintiff alleged (CT 3), and it was admitted (CT 7), that this base pay exceeds the minimum wage specified in section 4 of the order (CT 14, sec. 4). In addition, after three months employment, the driver-salesgirls receive a 15% commission on all sales made on regular routes over a quota figure of $475.00 per week (CT 20).

This "commission", however, is subject to reduction depending upon the amount of "cash shortage" which has accrued to that route during the month (CT 20). The shortages are computed in the following manner: Before leaving on her route the driver-salesgirl is required to inventory the goods on her truck, and she receives a small amount of cash for change purposes (CT 35-36). At the completion of the day's work she again is required to inventory her truck and turn in her cash (CT 35). The total of the cash and the retail value of the merchandise at the end of the day should, in theory, equal the value at the beginning of the day. In practice it does not (CT 26-34), and the extent of difference is the amount of the overage or shortage. These overages and shortages are totaled monthly and, if there is a net shortage for a particular route, it is subtracted from the "commissions" earned by the driver-salesgirls working that route (CT 35).

It is this deduction for shortages which is the subject of this lawsuit. The plaintiff's method of operation came to the attention of agents of the Division of Industrial Welfare in the spring of 1959 (CT 35). They informed the plaintiff that the deduction was unlawful under section 8

of Order No. 5-57 of the Industrial Welfare Commission (CT 35) which provides:

> "No employer shall make any deduction from the wage of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee."[1]

The plaintiff sought an appeal from this determination on the ground that the shortages were caused by the "culpable negligence" of the driver-salesgirls (CT 35). The matter was heard several times before an area supervisor who, in due course, found against the plaintiff and so informed plaintiff by letter on December 15, 1959 (CT 35). It was stipulated at the time of hearing this case that the plaintiff did not seek by this action to review the agency's decision that the plaintiff's employees were not "culpably negligent" (RT 3).

On April 6, 1960, the plaintiff filed a complaint in declaratory relief alleging the existence of a dispute between the plaintiff and the Division of Industrial Welfare as to the validity of section 8 of Order No. 5-57 (CT 1). Plaintiff contended section 8 of the order was unlawful in several respects, notably, that it was beyond the powers of the agency to promulgate and that it violated plaintiff's liberty of contract. After filing an answer admitting the factual allegations of the complaint (CT 6), the defendants filed a motion for summary judgment with supporting affidavits (CT 15-50). Plaintiff resisted this motion, but not on the ground of any factual dispute (RT 4) and, in due course, filed a cross-motion for summary judgment (CT 69).

---

1. The full order is in the record in this case (CT 14). Orders of the Industrial Welfare Commission appear in the Administrative Code. Order 5-57 appears at 8 Cal. Admin. Code sec. 11380.

The court, by minute order, granted the plaintiff's motion for summary judgment (CT 73). The basis of the court's ruling is not entirely clear from the minute order but it appears to rest chiefly on the ground that the Industrial Welfare Commission exceeded its powers insofar as its order prohibits deductions from wages which exceed the minimum wage specified in the order. It is also suggested that the order is unconstitutional, although the precise basis for that ruling is not made explicit in the minute order.

In a two to one decision, the District Court of Appeal held that the Division of Industrial Welfare did not have the power to promulgate section 8 of Order No. 5-57. Constitutional questions were not discussed. (Petition, Appendix A.) The Division of Industrial Welfare petitioned the California Supreme Court for a hearing, which was granted, and on February 19, 1962, the California Supreme Court unanimously reversed the lower courts and held the Industrial Welfare Commission had the power to promulgate section 8. Constitutional issues were not discussed. (Petition, Appendix B.) Petitioner timely filed a petition for rehearing, which was denied on March 21, 1962, but at that time the opinion was modified to hold "that the legislation now before us does no violence to constitutional due process or equal protection of the law." (Petition, Appendix C, page 44.)

ARGUMENT

I. There Is No Conflict in the Decisions of the Highest Courts of the Various States Sufficient to Justify the Granting of the Instant Writ.

As a basic reason for granting the instant writ, petitioner asserts that the instant decision by the California Supreme

Court conflicts with the decision of the highest courts of other states upon constitutional issues and that uniformity of decision is needed to guide legislators, administrators and collective bargainors in all the states.

Contrary to petitioner's assertion, respondent can find no direct conflict among the various states on the precise issues presented herein. In none of the cases cited is there any reference to invalidity of administrative orders or regulations of the type here involved on the grounds of a denial of equal protection of the law or an unconstitutional delegation of legislative power to the executive. So far as we are aware, there have been very few cases involving regulations of this precise type. The Wisconsin statute has twice been sustained (*Zarnott v. Timken Detroit Axle Co.*, 244 Wis. 596, 13 N.W.2d 53 (1944) and *Peters v. International Harvester Co.*, 248 Wis. 451, 22 N.W.2d 518 (1946).

Whatever "conflict" exists comes but from one case cited by petitioner, that of *Commonwealth v. Perry*, an 1891 case in 155 Mass. 117, 28 N.E. 1126, which invalidated a Massachusetts statute prohibiting mill operators from taking deductions from imperfections in weaving. Admittedly, the 1891 *Perry* case and the instant opinion appear to conflict in theory concerning the extent to which liberty of contract may be abridged. But as will be demonstrated, *infra*, liberty of contract is now well established to be a relative rather than an absolute right. The 1891 Massachusetts court and the present California Supreme Court may well have disagreed on the extent to which liberty of contract may be abridged in the interests of the common good. Certainly at this time, however, certiorari is not needed to resolve this "conflict". It no longer exists in light of the later authorities which have consistently upheld abridgments of liberty of contract similar to that which exists by virtue of the order

in question. It is submitted that the majority decision in the *Perry* case is entirely at odds with the later cases and that Justice Holmes' dissent in that case is much more in line with the modern approach. Justice Holmes said:

> "The prohibition, if any, must be found in the words of the constitution, either express or implied, upon a fair and historical construction. What words of the United States or state constitution are relied upon? The statute cannot be said to impair the obligation of contracts made after it went into effect: [citation] So far as has been pointed out to me, I do not see that it interferes with the right of acquiring, possessing, and protecting property, any more than the laws against usury or gaming. In truth, I do not think that that clause of the bill of rights has any application. It might be urged, perhaps, that the power to make reasonable laws impliedly prohibits the making of unreasonable ones, and that this law is unreasonable. If I assume that this construction of the constitution is correct, and that, speaking as a political economist, I should agree in condemning the law, still I should not be willing or think myself authorized to overturn legislation on that ground, unless I thought that an honest difference of opinion was impossible, or pretty nearly so."

We submit that Justice Holmes was correct. The concept of liberty of contract as a part of the due process clause has been rejected (*Lincoln Union v. North Western Co.*, 335 U.S. 525, 534-37). The question is not whether some statute or regulation must yield to this essentially meaningless absolute but rather whether the particular rule or regulation has any rational relationship to a legitimate object of government (*Redevelopment Agency v. Hayes*, 122 C.A.2d 777, 806, 266 P.2d 105). The protection of the welfare of working women—the establishment of fair working

conditions—clearly is a legitimate object of governmental concern (*Lincoln Union, supra; Cal. Drive-In Restaurant Association v. Clark*, 22 Cal.2d 287, 140 P.2d 657). That the order in question bears a rational and reasonable relationship to its legitimate public end will be demonstrated in the argument immediately following. Thus, it is submitted there is no conflict in the later authorities compelling the issuance of the instant writ.

II. The Instant Decision Upholding the Administrative Order in Question Does Not Deprive the Employer Herein of Due Process of the Law.

Petitioner admits that the liberty and property are not absolute concepts but that the state may abridge them for the common good (Petition, page 12). Petitioner acknowledges that the controlling principle in this case is whether the police power of the state has been used to accomplish a legitimate end in a reasonable way (Petition, page 12). Petitioner contends, however, that the instant decision erodes this principle. Petitioner thus is of the opinion that the instant order does not reasonably serve a recognized legitimate end. Petitioner is thus merely disagreeing with the conclusions of a responsible agency of the State of California and the highest court of that state.

The essence of petitioner's due process argument is simply whether due process requires that he should be allowed to collectively bargain away a safeguard deemed necessary by the State of California in the interests of protecting the health and welfare of women and minor employees in the State of California.

As demonstrated above, the test of whether one's liberty or property may be taken by the State in the interest of the common good is whether such taking is in furtherance of a

legitimate public need accomplished in a reasonable way. Unquestionably, the protection of women and minor employees has been deemed to be a legitimate end pursuant to the exercise of state police power (*West Coast Hotel Co. v. Parrish*, 300 U.S. 379). The only question remaining is whether the order here is an admissible or reasonable means to that end. More precisely, the question is whether the public body enacting the order could reasonably so conclude that the order serves the end. It is well settled that a court will not substitute its judgment for that of the enacting body but rather will concern itself only with the question could that public body reasonably conclude that the order enacted serves a legitimate public end (*Bess v. Park*, 144 Cal. App. 2d 798, 804, 301 P.2d 978 (1956), see also *Cal. Drive-In Restaurant Association v. Clark*, 22 Cal. 2d, 287, 297, 140 P.2d 657 (1943)).

A responsible public agency has deemed the order in question to be a necessary safeguard to the protection of women and minor employees. Its orders to this end are presumably valid (Labor Code section 1200). The highest court in the State of California has decided that the means enacted are reasonable and consistent with the end pursued.

Petitioner, however, disagrees. Petitioner asserts that the means used (admittedly enacted to serve a legitimate public end) are unreasonable and not in service of that end in that the order:

(1) Bears no relation to the legitimate end it is trying to reach;

(2) Is unnecessary in view of the powerful bargaining position of labor unions which protect the interests of women and minor employees;

(3) Deprives an employer of the right to protect himself from the negligence of his employees; and

(4) Deprives the employer of his "day in court".

The difficulty with petitioner's argument that the order in question bears no relation to the end sought is that petitioner miscomprehends the end pursued. On page 13 of his petition, petitioner infers that the order bears no relation to a minimum or living wage and thus is unreasonable. If the enactment of a minimum wage was the only end to be served, then indeed the order here might be unreasonable. But the order was not enacted to protect the minimum wage but rather was enacted and held by the California court to be properly enacted as affecting standard conditions of labor demanded by the health and welfare of women and minor employees.

In this regard the California Supreme Court stated:

> "Furthermore, the clerical or accounting feature of the employment relation, of which this system of deductions is a part, is certainly a condition of employment which the commission has the right to regulate. The use of the device of deductions creates the danger that the employer, because of his superior position, may defraud or coerce the employee by deducting improper amounts. While it is conceded in the case at bar that plaintiff herein practiced no fraud or deceit upon his employees, nevertheless, it was the utilization of secret deductions or 'kick-backs' to make it appear that an employer paid the wage provided by a collective bargaining contract or by a statute; although in fact he paid less, that led to the enactment of Labor Code sections 221-223 in 1937. These sections, this court said in Sublett v. Henry's etc. Lunch, 21 Cal.2d 273, 274, 'are declarative of an underlying policy in the law which is opposed to fraud and deceit.' In Shalz v. Union School District, 58 Cal. App. 2d 599, the court held that deductions by the employer from stipulated wages for payment of exorbitant amounts for lodging and transportation were in reality nothing more than devices to reduce the wage scale.

"A further reason for legislative disapproval of deductions exists in the reliance of the employee on receiving his expected wage, whether it be computed upon the basis of a set minimum, a piece rate, or a commission. To subject that compensation to unanticipated or undetermined deductions is to impose a special hardship on the employee.

"Plaintiff contends, however, that the effect of section 8 of the instant order is unfair to the employer since the prohibition of deductions for cash shortages places the burden of these losses upon the employer. But some cash shortages, breakage and loss of equipment are inevitable in almost any business operation. It does not seem unjust to require the employer to bear such losses as expenses of management when it is presently the unchallenged practice to require him to bear, as a business expense, the cost of tools and equipment, protective garments and uniforms furnished to the employee by prohibiting in section 9, subdivisions (a), (b) and (c) of Order 5-57, deductions for these costs.

"Furthermore, the employer may, and usually does, either pass these costs on to the consumer in the form of higher prices or lower his employees' wages proportionately, thus distributing the losses among a wide group. In addition, the employer is free to discharge any employee whose carelessness causes the losses, and he is not prohibited from deducting for cash shortages caused by 'he 'dishonest or wilful act, or by the culpable negligence of the employee.'

"California is not alone in its position that cash shortages should be borne as an expense of management. Hawaii, Wisconsin, New York, Oregon, Pennsylvania, and Washington have similar statutes and orders." (pp. 33-35 Pet. Appendix B)

"We hold therefore .... that deductions for cash shortages is properly characterized as a condition of employment." (p. 36, Pet. Appendix B)

Thus, the California Industrial Welfare Commission and the legislative and administrative bodies of the above-mentioned states have considered the order to be in furtherance of protecting the standard working conditions necessary to the health and welfare of women and minor employees. Petitioner, as is his right, disagrees with this opinion. His disagreement, of course, is of no moment unless as a matter of law we conclude that the opinion of so many responsible bodies is arbitrary, capricious and unreasonable. For the reasons summarized above by the California Supreme Court, it is obvious that while an honest difference of opinion is possible concerning the necessity of the order in question, a decision that it is necessary is certainly not arbitrary, capricious and unreasonable.

Petitioner also argues that the order is unnecessary in view of the existence of powerful labor unions who can bargain collectively concerning the prohibitions of the order in question and "concede them in the interest of the majority of its industrious and honest employers". Suffice to say that if this argument is carried to its logical end, all state requirements in the interest of the health and welfare of women and minor employees are unnecessary. As much as labor unions have helped to raise the standards of working conditions for women and minor employees in the State of California, the California Legislature has not yet seen fit to entrust the protection of women and minor employees solely to labor unions through the collective bargaining process. The order in question has been determined necessary to the health and welfare of women employees everywhere in the State of California. It is, of course, no answer to state that powerful unions consider the necessity of the prohibition in question. They may or may not exact it from employers during their negotiations. Their consideration of the prin-

ciple is, of course, not enough. Here the considered working condition was not exacted but was bargained away.

Petitioner next argues that the order in question deprives him of the right to protect himself against the ordinary negligence of his female and minor employees and that he is deprived of his "day in court" and that this is certainly the taking of property without due process of the law.

Petitioner paints an untrue picture of his "plight". All that the order in question forbids is a deduction from the wages of the employees for cash shortages caused by the simple negligence of the employee or by acts beyond her control. If the shortage is due to the willful act or culpable negligence of the employer, a deduction from the wage of the employee is permissible. If the shortage is the result of ordinary negligence, the employer may sue the employee or discharge her. In any event, he may pass the cost of these losses on to the consumer in the form of higher prices or lower his employee's wages proportionately. Thus, the employer notwithstanding the prohibitions of the order in question may still protect himself from the ordinary negligence of his female employees and may have his day in court. His property in no sense has been taken without due process of the law. All that has been taken is some of his complete and unrestricted liberty of contract in the interest of a recognized common good and such the law allows.

III. The Instant Decision Upholding the Administrative order in Question Does Not Deprive the Employer Herein of Equal Protection of the Law.

In its argument concerning equal protection of the law (briefed for the first time in the instant petition), petitioner seems to assert that somehow the guarantee of equal protection of the law is violated by the order in question in that

employees and male employees are not afforded the same rights given female and minor employees. Suffice to say no cases are cited to support this contention on the part of the employer. It is submitted that it is entirely without merit. Of course the order only pertains to women and minors. Their protection has been determined to be a legitimate end of the police power. The aim of the order is solely to protect them. If the specialized protection afforded them must meet the standard of equal protection of the laws in relation to their employers and male counterparts, then all laws enacted to protect women and minors must fail. This is, of course, not the law and the principle of equal protection of the law has no application here.

IV. The Order in Question Is Not the Result of an Unconstitutional Delegation of Legislative Power to the Executive.

Petitioner is in error in asserting this contention in the instant petition as it presents no federal question. It is well settled that the question of unlawful delegation of state legislative power is determined only in terms of the state constitution and the Federal Constitution plays no part therein (*Highland Farms Dairy v. Agnew*, 300 U.S. 608, 57 Supreme Ct. 549, 81 Lawyers Ed. 835; *Sandstrom v. California Horse Racing Award*, 31 Cal.2d 401, 189 P.2d 17).

Moreover, even under the California Constitution, petitioner's argument concerning an unconstitutional delegation of legislative power (again briefed for the first time in the instant petition) is once more based upon a faulty conception of the powers given the Industrial Welfare Commission of the State of California by the legislature of that state and the purpose to be served by the order. Petitioner argues:

> "The power to fix the standard conditions of labor now is administratively extended, and judicially blessed, to invade the field of wages only. Why, then, did the Legislature enact 1182(a) and 1182(b) of the California Labor Code? Is there not here delegated power which 'is not canalized within banks that keep it from overflowing'; in this case Section 1182(c) of the California Labor Code 'is a roving commission to inquire into evils and upon discovery correct them'. Schechter Corp. v. U.S. (1935), 295 U.S. 495, 557."

It is at once apparent that petitioner is not really arguing unconstitutional delegation of power but rather that the Industrial Welfare Commission exceeded the powers given it. The California Supreme Court did not decide that the Industrial Welfare Commission could rove into any area of evil and upon discovery attempt to correct that evil. The California Supreme Court decided only that the order in question could reasonably be determined to affect the standard conditions of labor necessary to the health and welfare of women and minor employees.

The legislature did limit the power of the Industrial Welfare Commission to enact orders and regulations. Its power was limited to enacting orders and regulations fixing a minimum wage, maximum hours of employment and standard conditions of labor demanded by the health and welfare of female and minor employees (Labor Code section 1182). Thus, the powers of the Industrial Welfare Commission were not roving in nature but well canalized and defined.

The California Supreme Court in the instant opinion has decided that the order in question is properly enacted as affecting standard working conditions. Petitioner merely disagrees with this decision. Petitioner begrudgingly accepts the fact that the California Supreme Court decides

the question of the extent of power granted by the Legislature to the Industrial Welfare Commission (a decision contrary to its own opinion) but then attempts to turn its own disagreement into an improperly raised federal issue of unconstitutional delegation of power. Contrary to the assertions by petitioner, the instant opinion does not hold that anything bearing on wages or hours may be characterized as a standard condition of labor and therefore subject to regulation by the Industrial Welfare Commission. The California Supreme Court went to great lengths to justify the use of the power given the Industrial Welfare Commission in respect to the order in question. Considerable discussion was devoted to the question of whether the instant regulation could be properly characterized as affecting the standard condition of labor. If in regard to the question of a proper exercise of the power granted, a relationship to the field of wages was all that was necessary, the opinion would have been short indeed. The opinion stands simply for the proposition that only those regulations and orders which establish a minimum wage, maximum hours of employment or fix standard conditions of labor demanded by the health and welfare of female and minor employees are within the power granted the Industrial Welfare Commission. Specifically, the opinion holds that the instant regulation falls within that power as affecting a standard condition of labor. Thus, the opinion does not justify nor "judicially bless" an unconstitutional delegation of legislative power to the executive nor endanger the American public from losing their right to have their elected legislators enact and repeal laws.

CONCLUSION

The state of the law concerning the issues herein is not uncertain or conflicting and therefore there is no need for certiorari to be granted herein. The order in question is a proper exercise of the police power to fix standard conditions of labor. It has been determined to be within the statutory powers of the Industrial Welfare Commission and bears a rational relationship to protecting the welfare of working women and minor employees. As such, it does not violate any constitutional limitations.

WHEREFORE, it is respectfully prayed that the instant petition for a writ of certiorari be denied.

Respectfully submitted,

STANLEY MOSK
Attorney General

B. FRANKLIN WALKER
Deputy Attorney General

By B. FRANKLIN WALKER
Attorneys for Respondents